

of the Code speaks of in reference to a new trial on an appeal by the prosecutor, is where there has been a *mistrial* in consequence of an erroneous ruling of the Judge. I must say, speaking for myself, that where there has been an acquittal it would be more desirable for the trial Judge to leave the prosecutor to apply for leave to appeal, than to reserve a case. Very different considerations, of course, prevail where there has been a conviction after an erroneous ruling on some important point adverse to the accused.

MACLAREN, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., MACLENNAN and GARROW, JJ.A., also concurred.

APRIL 14TH, 1903.

C.A.

REX v. WOODS.

*Criminal Law—Bigamy—Defence—Dissolution of Former Marriage—Decree of Foreign Court—Validity—Domicil.*

Case reserved by McDOUGALL, Judge of the County Court of York, before whom and a jury the defendant, Minnie G. Woods, was tried on the 2nd October, 1901, at the General Sessions of the Peace, upon an indictment for bigamy, and convicted. The questions reserved were as follows: 1. "Is a decree of divorce granted to either party from a marriage contracted in Canada, pronounced by a competent Court of the State of Michigan, for "extreme cruelty," a cause recognized as sufficient by the law of the said State, but a cause not recognized as a sufficient ground of divorce by the law of Canada, to be considered a valid decree of divorce in Canada? 2. In case the Court is of opinion that such a decree of divorce granted by a competent Court in the State of Michigan for the said cause is to be considered as binding and valid in Canada, was the decree of divorce granted by the Surrogate Court of Wayne County, Michigan, under the circumstances in evidence—both as to the facts and law—a valid and effectual divorce between the parties, so as to constitute in law a good defence under the Criminal Code to the indictment?"

The case was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, and MACLAREN, JJ.A.

T. C. Robinette, K.C., for the prisoner.

J. R. Cartwright, K.C., for the Crown.

MOSS, C.J.O.—The facts stated in the reserved case shew that, at the time of the marriage between William N. Barn-